

**International Brotherhood of Electrical Workers,  
Local Union No. 98 and Lucent Technologies,  
Inc. and Communications Workers of America,  
District 13, AFL-CIO. Cases 4-CD-936 and 4-  
CD-939**

August 12, 1997

**DECISION AND DETERMINATION OF  
DISPUTE**

**BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS**

The charges in this Section 10(k) proceeding were filed on April 4, 1996, and April 19, 1996, by Lucent Technologies, Inc., and by Communication Workers of America District 13, AFL-CIO, respectively. The charges allege that the Respondent, International Brotherhood of Electrical Workers Local Union No. 98 (Local 98) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Lucent Technologies, Inc. (the Employer) to assign certain work to employees represented by Local 98 rather than to employees represented by Communication Workers of America District 13, AFL-CIO (CWA). A hearing was held on August 9, September 24, and November 22, 1996, before Hearing Officer Juditra Burgess. The Employer, Local 98, and CWA have filed posthearing briefs.

The National Labor Relations Board affirms the hearing officer's rulings, and finds them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

The Employer, a New Jersey corporation, is engaged in the business of installing telecommunications equipment. During the past year, it purchased and received goods valued in excess of \$50,000 directly from points located outside the State of New Jersey and received gross revenues in excess of \$500,000. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that Local 98 and CWA are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

The Employer has a contract with Home Depot, Inc. to install telecommunications wiring at Home Depot stores throughout the United States, including stores in Pennsylvania and the Delaware Valley. Pursuant to that contract, the Employer assigned several of its own employees, represented by CWA, to install telecommunications wiring, known as category 3 and category 5 wiring, for a Home Depot store located in

Clifton Heights, Pennsylvania.<sup>1</sup> Category 3 wiring is a form of wiring that supports voice communications and low speed data transmissions. Category 5 wiring supports voice communications and higher speed data transmissions. The wiring at the Clifton Heights project covered voice communications throughout the Home Depot store, including paging, point of sales, cash register systems, and store speaker systems.

Anthony J. Pacifico, the Employer's then district manager, testified that prior to commencing the telecommunications wiring work at the Clifton Heights project, he telephoned Local 98 Business Manager John Dougherty in late March 1996.<sup>2</sup> According to Pacifico, he called Dougherty because he had been informed by one of the Employer's supervisors that Local 98 had claimed similar work at another of the Employer's Home Depot jobsites in nearby Cheltenham, Pennsylvania. Pacifico was concerned that a similar situation might occur at Clifton Heights. Pacifico testified that he asked Business Manager Dougherty about the situation at Clifton Heights and that Dougherty responded that the wiring work at the project should be performed by members of Local 98. According to Pacifico, Dougherty stated that "if . . . his people do not get the work, he would have pickets up there, and shut down the job." Thereafter, on about April 1, Pacifico had another conversation with Dougherty to seek to resolve the matter. According to Pacifico, Dougherty stated to him that "he thought the work should be his, or represented by the electrician's union. And that if it was not that way, he would have pickets up, and shut down the jobsite."

Eddie Hamilton, a distribution technician employed by the Employer, testified that on April 4, he observed 8 to 20 Local 98 pickets at the Clifton Heights Home Depot jobsite. According to Hamilton, when he and other employees of the Employer sought to enter the jobsite, a person who identified himself as a representative of Local 98 stated that they would not be permitted entry. Hamilton testified that on this occasion he heard Local 98 Business Representative Jim Mink tell an unidentified person that the wiring work was Local 98's work.

Richard Reed, the Employer's operations manager, testified that on April 4 he observed about 25 Local 98 pickets at the Clifton Heights jobsite. These pickets blocked his entry to the jobsite. According to Reed, he informed the pickets that he was there to perform the wiring work but was told by the pickets that "they were going to do it; they did not want us to do it." Reed testified that the pickets, including Local 98 Business Representative Mink, told him that they were physically going to stop him, and the Employer's em-

<sup>1</sup> The Clifton Heights project is also referred to in the record as the Upper Darby site.

<sup>2</sup> All dates are in 1996 unless stated otherwise.

ployees who accompanied Reed, from entering the jobsite.

Following this encounter, Reed telephoned the Employer's labor relations office. District Manager Pacifico instructed Reed to hire an IBEW contractor to perform the wiring work at the Clifton Heights jobsite. By letter dated April 4, Pacifico and Dougherty agreed that all Local 98 pickets would be removed immediately from the Clifton Heights Home Depot jobsite and that the Employer would offer the wire work at that site to a local contractor employing members of Local 98. Shortly thereafter, the Employer contracted out the wiring work to Denco Communications, who employed members of Local 98. Pacifico testified that, in the absence of the Local 98 picketing, the Employer would have used its own employees represented by CWA to perform the wiring work at the Clifton Heights jobsite.

#### B. Work in Dispute

The work in dispute is the installation of category 3 and category 5 wiring for telecommunications equipment at the Home Depot facility located in Clifton Heights, Pennsylvania.

#### C. Contentions of the Parties

The Employer and CWA contend that there is reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) of the Act. They further contend that the work in dispute should be assigned to the Employer's present employees represented by CWA on the basis of the Employer's bargaining agreements with CWA covering these employees; company preference and past practice; area practice; relative skills; and economy and efficiency of operations.

Local 98 contends that the work in dispute should be assigned to employees represented by Local 98. It contends that the factors of employer preference and practice, economy and efficiency, and area practice favor an award to employees represented by Local 98.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The Employer's district manager, Pacifico, testified that Local 98 Business Manager Dougherty stated to him in late March that the wiring work at the Home Depot project in Clifton Heights should be performed by employees represented by Local 98. According to Pacifico, Dougherty stated that, in the event these employees did not get the assignment of this work, "he would have pickets up there, and shut down the job."

Thereafter, when the Employer assigned the work to its own employees represented by CWA, Local 98 picketed the Clifton Heights jobsite and blocked entry into the jobsite sought by the Employer and its CWA-represented employees. The Employer's operations manager, Reed, was told by the Local 98 pickets that "they were going to do" the work and that the CWA-represented employees would not do the work. As a result of the picketing and the blocking of ingress into the Clifton Heights jobsite, the Employer contracted the work in dispute to a contractor who employed members of Local 98.

Based on the foregoing, we find reasonable cause to believe that Local 98 made claims for the work in dispute at the Clifton Heights jobsite and, thereafter, engaged in picketing in support of that claim by which it sought to impede the Employer from assigning the work to the Employer's own CWA-represented employees. In these circumstances, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The parties stipulated that there is no voluntary method of adjustment of the work dispute that would be binding on all the parties.

Having found that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no-agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act, we conclude that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

##### 1. Certifications and collective-bargaining agreements

The Employer and CWA have an existing collective-bargaining agreement covering the installation wiring work in dispute. Local 98 does not have a collective-bargaining agreement with the Employer. Accordingly, this factor favors an award of the disputed work to employees represented by CWA.

##### 2. Company preference and past practice

Pacifico testified that the Employer's preference is that the work in dispute be performed by its own employees represented by CWA. Pacifico testified that, in

the absence of Local 98's picketing at the Clifton Heights project, the work in dispute would have been performed by its own CWA-represented employees rather than by the Local 98-represented employees of contractor Denco.

With respect to the Employer's past practice, Operations Manager Reed testified that the Employer's CWA-represented employees have performed the category 3 and category 5 wiring installation work for the Employer at numerous Home Depot stores in the tri-state area of Pennsylvania, Delaware, and New Jersey. CWA-represented employees have performed wire installation work for the Employer, and its predecessor AT&T and Bell Company entities, for many years in the geographic area.

Local 98 Business Manager Dougherty testified that it was his understanding (through information received from contractors and other Local 98 business managers) that Local 98-represented employees had performed such work at the Employer's Home Depot projects in south Philadelphia and Willow Grove. Dougherty admitted, however, that he had no direct personal knowledge as to the work performed. In addition to contracting out the category 3 and category 5 wiring installation work at the Clifton Heights jobsite, the Employer on one previous occasion contracted out the wire installation work to a contractor employing Local 98-represented employees at a Home Depot project in Cheltenham, following picketing by Local 98 at that jobsite.

The record shows that the Employer's preference is to assign the work in dispute to its own employees represented by CWA. The evidence of employer past practice also tends to show that the Employer has used CWA-represented employees at other sites, in the absence of picketing by Local 98. Accordingly, we find that this factor favors an award of the work in dispute to employees represented by CWA.

### 3. Area and industry practice

Both CWA and Local 98 furnished evidence of having performed wire installation work at numerous projects in the local geographic area. CWA contends that because the Employer and its predecessor AT&T/Bell entities have long been the uncontested leaders in the telecommunications industry, the Employer's practice constitutes the area and industry practice. On the other hand, Local 98 furnished evidence of having performed wire installation work for numerous contractors in the Philadelphia area. In these circumstances, we find that this factor is inconclusive and does not favor an award either to CWA or Local 98.

### 4. Relative skills

Operations Manager Reed testified that the Employer's CWA-represented employees are fully versed in

all categories of wiring and installation practices and are experts in the telecommunications installation field. Reed testified that the Employer maintains a training program that teaches its CWA-represented employees basic skills and also provides continuous education throughout their years of service. More particularly, the Employer provides every CWA-represented technician a minimum of 40 hours of classroom technical training, on an annual basis, with regard to installation, maintenance, and testing of all types of category 3 and category 5 wiring performed by the Employer. The Employer also provides category 5 certification and registration to its CWA-represented employees.

Local 98 Business Representative Dougherty testified that Local 98 offers a full-time college-accredited apprenticeship program, and a journeyman education program in which 85 percent of the offered classes are directly related to the telecommunications field. Dougherty testified that Local 98's journeyman program was recently honored as the best IBEW journeyman program on the East Coast. Dougherty further testified that the telecommunications field is a changing one, so much so that many courses "are specifically being designed to handle a specific contractor or vendor or owner's program." Further, as noted, employees represented by Local 98 have performed wiring installation work for numerous contractors in the geographical area.

The record shows that the Employer's employees represented by CWA receive detailed training on an annual basis with respect to the specific work in dispute. Further, according to Operating Manager Reed, these employees are fully versed in all categories of wiring and installation practices of the Employer.

The record also shows that Local 98 maintains highly respected apprenticeship and electrical journeyman programs. However, as Local 98 Business Manager Dougherty acknowledged, many of Local 98's own courses are specifically designed to handle a specific contractor's work. Dougherty also acknowledged that the nature of the telecommunications field often calls for training designed to handle a specific company program. It is evident, therefore, that the training and work experience furnished by the Employer to its own CWA-represented employees is more specifically designed for the Employer's own category 3 and category 5 jobs. Accordingly, as their skills and training are adapted toward the Employer's wiring operations to a degree greater than those of employees represented by Local 98, we find that this category favors an award of the work in dispute to the Employer's own employees represented by CWA.

### 5. Economy and efficiency of operations

Operations Manager Reed testified that the Employer's CWA-represented employees work out of a central

office in Broomall, Pennsylvania.<sup>3</sup> Reed testified that, for purposes of efficiency, he attempts to keep particular work crews intact for the various Home Depot wiring installation projects because all these stores basically follow the same uniform wiring guidelines. Further, as noted, the Employer furnishes detailed training to its own CWA-represented employees and, therefore, these employees are already well versed in the Employer's requirements for category 3 and category 5 wiring. There is no evidence that assignment of the work to employees represented by Local 98 would be as economical and efficient. Accordingly, this factor favors an award of the work to employees represented by CWA.

### Conclusion

After considering all the relevant factors, we conclude that employees represented by CWA are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, company preference and past practice, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by CWA, not to that union or its members.

### Scope of the Award

The Employer and CWA seek a broad award applicable to all category 3 and category 5 wire installation work performed by the Employer within all geographical areas in which the jurisdiction of CWA and Local 98 coincide.

When a union demonstrates a proclivity to engage in unlawful conduct and there is an indication that the dispute regarding an employer's work is likely to recur, the Board will issue an award broad enough to encompass the geographical area in which an employer does business and in which the jurisdictions of the competing unions coincide. *Plumbers Local 155 (Allied/Hussman)*, 222 NLRB 796 (1970).

In *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997), the Board found, in a parallel Section 10(k) proceeding, that reasonable cause exists to believe that Local 98 violated Section 8(b)(4)(D) with regard to a dispute between Local 98 and CWA concerning the Employer's installation of telephone switching systems. In that proceeding, like the present case, Local 98 claimed the work in dispute

and then engaged in picketing to prevent the Employer's CWA-represented employees from performing the work in dispute. Although the work in dispute in both cases is not identical, these parallel cases demonstrate a proclivity on the part of Local 98 to engage in unlawful conduct in order to obtain work in dispute performed by the Employer. These cases also demonstrate that there is a continuous controversy between Local 98 and CWA regarding the Employer's installation of various forms of telecommunications equipment. In these circumstances, which show a likelihood of recurring disputes and a proclivity to engage in unlawful conduct, we find it appropriate that our determination shall cover assignment of the work in dispute in the geographical area in which the Employer does business and in which the geographical jurisdictions of Local 98 and CWA coincide.<sup>4</sup>

### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Lucent Technologies, Inc., represented by the Communications Workers of America, District 13, AFL-CIO, are entitled to perform the work of installing category 3 and category 5 wiring for telecommunications equipment installed by Lucent Technologies, Inc., wherever the geographical jurisdictions of International Brotherhood of Electrical Workers, Local Union No. 98 and Communications Workers of America, District 13, AFL-CIO, coincide.

2. International Brotherhood of Electrical Workers, Local Union No. 98 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Lucent Technologies, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local Union No. 98 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing Lucent Technologies, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

<sup>3</sup>The Employer also has employees who perform category 3 and category 5 wiring work who do not work out of the Broomall office.

<sup>4</sup>We find no merit to Local 98's contention that entry of a broad award would deprive Local 98 of due process. The record shows that Local 98 was put on notice of the Charging Parties' request for a broad award at the outset of the hearing. Further, we note that the hearing officer granted Local 98's request for a postponement of the hearing to prepare its case, in response to the positions of the Charging Parties, and that Local 98 had ample time to prepare by the time the hearing reconvened 2 months later.